



**6560-50-P**

## **ENVIRONMENTAL PROTECTION AGENCY**

### **FRL-9912-59-Region-5**

**[EPA-R05-OPPT-2014-0360]**

### **TSCA Sections 402(a), 402(c), and 406(b) Program Authorization Application**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice; request for comments and opportunity for public hearing.

**SUMMARY:** On May 19, 2014, the Environmental Protection Agency (EPA) determined that the Bois Forte Band of Chippewa (Bois Forte) had submitted a complete application under section 404 of the Toxic Substances Control Act (TSCA) requesting authorization to administer and enforce the requirements for TSCA sections 402(a), 402(c), and 406(b) in accordance with the provisions of TSCA for trust lands located within the exterior boundaries of the reservation. These programs ensure that: individuals engaged in certain work that may disturb lead-based paint, including but not limited to abatement and renovation, are properly trained; that training programs are accredited; that contractors engaged in such activities are certified; that owners and occupants of target housing and/or child-occupied facilities are provided information concerning potential hazards of lead-based paint exposure before certain renovations are begun; and that the required work is performed in accordance with work practice standards. This notice announces receipt of the Bois Forte Band of Chippewa's application and request for authorization to administer the program in lieu of the federal program. EPA has determined that the Bois Forte application is complete, and is now providing a 45-day public comment period and opportunity to request a public hearing.

**DATES:** Comments, identified by docket identification (ID) number EPA-R05-OPPT-2014-0360, must be received on or before [*insert date 45 days from date of publication in the **Federal Register***]. In addition, a public hearing request must be submitted on or before [*insert date 15 days from date of publication in the **Federal Register***].

**ADDRESSES:** Comments and requests for a public hearing may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION** section in this notice. To ensure proper receipt by EPA, it is imperative that you identify docket ID number EPA-R05-OPPT-2014-0360 in the subject line on the first page of your response.

**FOR FURTHER INFORMATION CONTACT:** Emma Avant, Land and Chemicals Division (LCD), Toxics Section, U.S. Environmental Protection Agency, 77 W. Jackson Boulevard, Chicago, IL 60604; telephone number: (312) 886-7899; e-mail address: *avant.emma@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

**I. General Information**

*A. Does this Action Apply to Me?*

This action is directed to the public in general. This action may, however, be specifically of interest to firms and individuals engaged in lead-based paint activities and/or renovation and remodeling activities involving pre-1978 housing on the Bois Forte Reservation. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

*B. How Can I Get Additional Information, Including Copies of this Document or Other Related Documents?*

1. *Electronically.* EPA has established an official record for this action under docket ID number EPA-R05-OPPT-2014-0360. The official record consists of the documents specifically referenced in this action, this notice, the Bois Forte TSCA program authorization application, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business information (CBI).

All documents in the official record are listed in the docket index available at

<http://www.regulations.gov>. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically at <http://www.regulations.gov>, or, if only available in hard copy, at the address listed below.

2. *In person:* You may view this document and related documents by visiting the Bois Forte Tribal Government Environmental Services Office, 5344 Lakeshore Drive, P.O. Box 16, Nett Lake, Minnesota 55772, contact telephone number (218) 757-3543, or EPA Region 5, 77 W. Jackson Boulevard, Chicago, Illinois 60604, contact telephone number (312) 886-7899.

C. *How and to Whom Do I Submit Comments?*

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket ID number EPA-R05-OPPT-2014-0360 in the subject line on the first page of your response.

1. *By mail:* Submit your comments and hearing requests to: Emma Avant, LCD, Toxics Section, U.S. Environmental Protection Agency, 77 W. Jackson Boulevard, Chicago, IL 60604.

2. *By person or courier:* Deliver your comments and hearing requests to: EPA Region 5, LCD, Toxics Section, 77 W. Jackson Blvd., Chicago, IL 60604. The Regional office is open from

8 a.m. to 5 p.m., Monday through Friday, excluding legal holidays. The telephone number for the regional office is (312) 886-6003.

3. *Electronically*: You may submit your comments and hearing requests electronically by e-mail to: [avant.emma@epa.gov](mailto:avant.emma@epa.gov) or through <http://www.regulations.gov>, or mail your computer disk to the address identified above. Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard disks in Microsoft Word or ASCII file format.

*D. How Should I Handle CBI Information That I Want to Submit to the Agency?*

You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under **FOR FURTHER INFORMATION CONTACT**.

*E. What Should I Consider as I Prepare My Comments for EPA?*

You may find the following suggestions helpful for preparing your comments.

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the notice or collection activity.
7. Make sure to submit your comments by the deadline in this notice.
8. To ensure proper receipt by EPA, identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

## **II. Background**

### *A. What Action is the Agency Taking?*

On July 14, 2010, the Bois Forte Band of Chippewa (Bois Forte or the Tribe), located in St. Louis and Koochiching Counties in Northern Minnesota, submitted an application under section 404 of TSCA requesting authorization to administer and enforce requirements for: lead-based paint activities (such as abatement) in accordance with section 402(a) of TSCA; renovation, repair and painting (referred to as “RRP”), in accordance with section 402(c) of TSCA; and pre-renovation education in accordance with section 406(b) of TSCA. These programs contain procedures and requirements for the accreditation of lead-based paint activities and RRP training programs, procedures and requirements for the certification of individuals and firms engaged in lead-based paint activities or RRP activities, and work practice standards for performing such activities, and ensure that owners and occupants of target housing are provided information concerning potential hazards of lead-based paint exposure before certain lead-based paint activities or RRP activities are begun. Subsequently, Bois Forte supplemented the application on August 30, 2010, September 23, 2011, January 31, 2012, February 23, 2012, and July 13, 2013.

After reviewing all the application materials, EPA now considers the Tribe's application to be complete.

The Tribe's application requests authorization to administer and enforce these requirements on lands held in trust for the Tribe within the reservation boundaries. The Tribe has not, at this time, requested authorization to administer and enforce these programs on non-member owned fee lands within the reservation boundaries. If EPA authorizes the Tribal program, EPA will continue to administer and enforce the requirements on non-member owned fee lands within the reservation boundaries. The Tribe may, however, apply to administer and enforce these requirements for all lands located within the exterior boundaries of the reservation at some future time, but must meet all statutory and regulatory requirements under section 404(b) of TSCA, 15 U.S.C. 2684(b) and 40 CFR part 745 subpart Q.

The Bois Forte Reservation includes five land areas, four of which currently include lands held in trust for the Tribe. The Lake Vermillion land area, approximately 2803 acres located near the town of Tower, Minnesota, and the Sugar Bush and Indian Point land areas, approximately 83 acres and 60 acres, respectively, both located near the town of Orr, Minnesota, consist entirely of trust land for which the Tribe will administer and enforce the program. The Nett Lake land area, comprising of 103,000 acres surrounding Nett Lake, and the vast majority of the Bois Forte Reservation land and members, includes both trust land, where the Tribe will administer and enforce the program, and non-member owned fee land, where the Tribe will not. The Deer Creek land area, approximately 23,000 acres currently includes no trust lands; at this time the Tribe will not administer the program on the Deer Creek land area. There are a total of approximately 100 pre-1978 housing properties on trust lands where the Tribe will administer and enforce the program. Because the program addresses lead-based paint found in housing constructed prior to 1978, the only scenarios under which additional housing will come into the universe of regulated

properties are: 1) pre-1978 housing is moved onto trust land, and 2) new lands are placed into trust upon which pre-1978 housing exists.

The Tribe's proposed program includes one provision for which the Tribal program is more stringent than the federal program. The Tribe's definition of "target housing" includes all buildings on Tribal trust lands. The federal program only applies to "target housing," as defined by section 401(17) of TSCA, 15 U.S.C. 2681, which includes housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child who is less than 6 years of age resides or is expected to reside in such housing for the elderly or persons with disabilities) or any zero-bedroom dwelling. As noted below in Section IV of this notice, if approved, EPA may exercise its enforcement authority under TSCA against a violation of, or a failure or refusal to comply with, any requirement of the Bois Forte Lead Program that is consistent with federal program requirements. Therefore, if approved, EPA will not enforce the Bois Forte Lead Program for violations arising at buildings not included in the federal definition of "target housing."

In order for EPA to authorize the Bois Forte program, it must determine that the application includes information sufficient for EPA to find Bois Forte eligible for treatment in the same manner as a state (TAS). For the TSCA lead program, TAS requirements are found in 40 CFR section 745.324(b)(4), and include, among other things, that the tribe is recognized by the Secretary of the Interior; has an existing government exercising substantial governmental duties and powers; has adequate civil regulatory jurisdiction over the subject matter and entities regulated; and is reasonably expected to be capable of administering the federal program for which it is seeking authorization. In determining that the Tribe's application is complete, EPA believes that the Tribe has demonstrated that it can meet each of these requirements for TAS under this program.

Pursuant to section 404(b) of TSCA, 15 U.S.C. 2684(b) and 40 CFR part 745, subpart Q, EPA provides notice and an opportunity for a public hearing on a state or tribal program application before approving the program. Therefore, by this notice EPA is soliciting public comment on whether the Bois Forte application meets the requirements for EPA approval. This notice also provides an opportunity to request a public hearing on the application. If a hearing is requested, EPA will issue a **Federal Register** notice announcing the date, time and place of the hearing and EPA's final decision on the application will also then be published in the **Federal Register**.

*B. What is the Agency's Authority for Taking this Action?*

On October 28, 1992, the Housing and Community Development Act of 1992, Public Law 102-550, became law. Title X of that statute was the Residential Lead-Based Paint Hazard Reduction Act of 1992. That Act amended TSCA (15 U.S.C. 2601 *et seq.*) by adding Title IV (15 U.S.C. 2681-2692), entitled *Lead Exposure Reduction*. In the **Federal Register** of August 29, 1996 (61 FR 45813) (FRL-5389-9), April 22, 2008 (73 FR 21758) (FRL-8355-7), and June 1, 1998 (63 FR 29908) (FR -5751-7), respectively, EPA promulgated final TSCA section 402(a), 402(c), and 406(b) regulations governing lead-based paint activities (abatement) training, certification and work practice standards; renovation, repair and painting (RRP) training, certification and work practice standards; and pre-renovation education (PRE) requirements in target housing and/or child-occupied facilities. These programs establish requirements for training individuals conducting lead-based paint activities and RRP activities; accrediting lead-based paint activities and RRP activities training providers; and for lead-based paint activities and RRP work practices. The program also ensures that owners and occupants of target housing and child-occupied facilities are provided information concerning potential hazards of lead-based paint exposure before certain renovations are conducted. In addition to providing general information



on the health hazards associated with exposure to lead, the lead hazard information pamphlet advises owners and occupants to take appropriate precautions to avoid exposure to lead-contaminated dust and debris that are sometimes generated during renovations. EPA believes that distribution of the pamphlet will help to reduce the exposures that cause serious lead poisonings, especially in children under age 6, who are particularly susceptible to the hazards of lead. Under section 404 of TSCA, 15 U.S.C. 2684, a state or tribe may seek authorization from EPA to administer and enforce its own lead-based paint activities, RRP and/or pre-renovation education program in lieu of the federal program. The regulations governing the authorization of a state or tribal program under both sections 402 and 406 of TSCA are codified at 40 CFR part 745, subpart Q. A state or tribe that chooses to apply for program authorization must submit a complete application to the appropriate regional EPA office for review. Those applications will be reviewed by EPA within 180 days of receipt of the complete application. To receive EPA approval, a state or tribe must demonstrate that its program is at least as protective of human health and the environment as the federal program, and provides for adequate enforcement under section 404(b) of TSCA, 15 U.S.C. 2684(b). EPA's regulations at 40 CFR part 745, subpart Q provide the detailed requirements a state or tribal program must meet in order to obtain EPA approval.

### **III. Tribal Program Description Summary**

The following is the Tribe's proposed TSCA Lead-Based Paint program summary, which the Bois Forte Tribe prepared as a required part of its application:

The Bois Forte has adopted by Resolution # 6-2011, the ordinance entitled *Bois Forte Lead Program* in order to provide clear and specific authority and guidance for regulating renovation requirements, and pre-renovation notification requirements and lead-based paint activities, including assessment, inspection, and abatement of lead-based paint

on the Bois Forte Reservation. Penalties for non-compliance are established. The ordinance targets all buildings located on the Bois Forte Reservation.

The ordinance is designed to be at least as protective as the federal law and provide for adequate enforcement of all provisions through a schedule of flexible remedies. This is accomplished through a combination of Tribe-specific requirements (training accreditation) that are identical to the federal regulations and through incorporation by reference of other required federal elements (certification of individuals, pre-renovation notification activities, renovation, and definitions of lead-based paint hazards). Also incorporated by reference are the federal definitions with the notable expansion of the definition of target housing to include all reservation buildings.

The ordinance contains enforcement and compliance requirements consisting of a schedule of flexible remedies and an appeals process.

The Bois Forte Reservation Lead Program request for federal delegation of authority is a natural application of tribal sovereign power over environmental regulatory activities on the Tribe's lands for the health, welfare, and safety of community members. EPA believes that the Tribe's program description, above, together with the rest of the application, demonstrates adequate civil regulatory jurisdiction over the matter and entities regulated.

#### **IV. Federal Overfilling**

Section 404(b) of TSCA makes it unlawful for any person to violate, or fail or refuse to comply with, any requirement of an approved state or tribal program. Therefore, if EPA approves the Bois Forte Lead Program application, EPA reserves the right to exercise its enforcement authority under TSCA against a violation of, or a failure or refusal to comply with, any requirement of the Bois Forte Lead Program to the extent that such requirement is consistent with federal law.

**List of Subjects**

Environmental Protection, Hazardous Substances, Lead, Renovation Notification, Reporting and Recordkeeping requirements.

Dated: June 10, 2014.

Susan Hedman,  
Regional Administrator, Region 5.

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